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the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff  
Investment Securities LLC and Bernard L.  
Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,  
Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED  
IN THE RECORD ON APPEAL AND COUNTER-STATEMENT OF THE ISSUES TO  
BE PRESENTED ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Appellee Irving H. Picard, as trustee (the “Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78aaa *et seq.*, and the substantively consolidated estate of Bernard L. Madoff, by and through his undersigned counsel, respectfully submits the following counter-designation of additional items to be included in the record on appeal (the “Counter-Designation”) and counter-statement of the issues to be presented on appeal (the “Counter-Statement”) in connection with the appeal filed by Marsha Peshkin and a “large group of other Madoff customers” (“Appellants”) from the Minute Order signed on 3/30/2011 Denying Customers Motion to Set Aside the Order Approving the Trustees Settlement With the Levy Heirs for Failure to Disclose Material Information (the “Order”) entered on March 30, 2011, by the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) (ECF No. 3984).

**COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED**  
**IN THE RECORD ON APPEAL**

The Trustee hereby counter-designates the following additional items to be included on the record on appeal:

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Docket Text</u>
1	09-1197 (Bankr. S.D.N.Y.)	25	Motion to Approve Compromise / <i>Memorandum of Law in Support of Motion For Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure Approving an Agreement by and Between The Trustee and the Picower BLMIS Account Holders And Enjoining Certain Claims</i> filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 1/13/2011 at 10:00 AM at Courtroom 623 (BRL) Responses due by 1/6/2011, (Attachments: # <u>1</u> Notice of Motion# <u>2</u> Exhibit A - Agreement# <u>3</u> Exhibit B - Stipulation# <u>4</u> Exhibit C - Proposed Order# <u>5</u> Exhibit D - Affidavit of Irving Picard) (Sheehan, David) (Entered: 12/17/2010)
2	09-1197 (Bankr. S.D.N.Y.)	32	Objection to Motion <i>Objection of Susanne Stone Marshall and Other Victims of the Crime of the Picower Parties whose Claims are Not Recognized by the Trustee to the Trustees Settlement with the Picower Parties</i> (related document(s) <u>25</u> ) filed by Helen Chaitman on behalf of Susanne Stone Marshall, the putative class that she represents, and other Madoff investors whose claims are not recognized by the Trustee. (Attachments: # <u>1</u> Attachment) (Chaitman, Helen) (Entered: 01/06/2011)
3	09-1197 (Bankr. S.D.N.Y.)	36	Response / <i>Trustee Irving Picard's Response to Objections to Picower Settlement</i> (related document(s) [25,32,34,35] filed by Keith R. Murphy on behalf of Irving H. Picard. with hearing to be held on 1/13/2011 at 10:00 AM at Courtroom 623 (BRL) (Attachments: # <u>1</u> Exhibit A) (Murphy, Keith) (Entered: 01/11/2011)
4	09-1197 (Bankr. S.D.N.Y.)	37	<i>Statement of the Securities Investor Protection Corporation in Support of Trustee's Motion for Entry of an Order Approving an Agreement by and Between the Trustee and the Picower BLMIS Account Holders and Enjoining Certain Claims, and Reply to Responses in Opposition Thereto</i> (related document(s) <u>25</u> ) filed by Josephine Wang on behalf of Securities Investor Protection Corporation. (Wang, Josephine) (Entered: 01/11/2011)

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Docket Text</u>
5	09-1197 (Bankr. S.D.N.Y.)	43	Order signed on 1/13/2011 Approving an Agreement by and Among The Trustee and The Picower BLMIS Account Holders and Issuing a Permanent Injunction (Related Doc # <u>25</u> ). (Saenz De Viteri, Monica). <b>(Entry Modified on 1/24/2011 to Attach "Exhibit A" which was Previously Omitted)</b> (Richards, Beverly). (Entered: 01/13/2011)
6	10-4932 (Bankr. S.D.N.Y.)	18	Complaint (Second Redacted Version) against JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, J.P. Morgan Securities Ltd. filed by Deborah H. Renner on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E) (Renner, Deborah) Modified on 4/14/2011 (Richards, Beverly). (Entered: 04/14/2011)

**COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL**

The Trustee hereby submits the following counter-statement of the issues on appeal:

1. Whether the Bankruptcy Court abused its discretion in finding that Appellants lacked sufficient grounds under Federal Rule of Civil Procedure 60(b) to vacate an order (the "Levy Settlement Order") approving a settlement between the Trustee and Jeanne Levy-Church and Francis N. Levy (the "Levy Settlement") where Appellants failed to show:
  - a. Fraud, misrepresentation, or other misconduct by the Trustee; or
  - b. Exceptional circumstances that warranted vacating the Levy Settlement Order where none of the allegations in Appellants' Motion altered the Trustee's business judgment in entering into the Levy Settlement that returned \$220 million to the estate for the benefit of BLMIS victims.
2. Whether the Bankruptcy Court's holdings that the Levy Settlement met the standards of Federal Rule of Bankruptcy Procedure 9019(a) when the Levy Settlement Order was entered and when the Bankruptcy Court heard Appellants' Motion were clearly erroneous or abuses of the Bankruptcy Court's discretion.

3. Whether the Bankruptcy Court abused its discretion in refusing to address a baseless request raised in Appellants' Reply to remove the Trustee and his counsel, which relief was not requested in Appellants' Motion and notice of such relief was not provided to all creditors of the BLMIS estate.

Dated: New York, New York  
May 6, 2011

Respectfully submitted,

/s/ David J. Sheehan

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